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Secretary of State Plan for Adoption of Equipment Certification Rules
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Pursuant to an order issued by Denver District Court Judge Manzanares issued on October 19, 2006, the Secretary must “promulgate a rule concerning minimum security standards for DREs as required by § 1-5-616(1)(g), C.R.S. (2006).” The order further orders the Secretary “to retest previously certified systems or any new systems, using the revised security standards to be promulgated by the Secretary, prior to the next primary, general or statewide ballot issue election following the November 7, 2006 general election, whichever comes first.” A statewide ballot issue election may be held in November 2007 if a qualified issue is placed on the ballot. In order to meet this deadline, the Secretary of State has developed an intensive plan to ensure that an open and thorough process is followed in drafting and adopting amendments to these technically sophisticated rules within the short timeframe that is available.

The rules must be revised and implemented early in 2007 because there is a limited timeframe within which to test and certify voting equipment once the rules have been adopted. The state must conduct testing and certification within ninety days from the vendor’s submission, and has an additional thirty days within which to make a report and notify the vendor and the counties of the determination. (section 1-5-617(1)(c), C.R.S.) This process should be completed no later than July 1, 2007 in order to allow the county clerk and recorders sufficient time to obtain approval for and purchase any new equipment, and perform acceptance testing before the equipment is used in an election.

The Colorado Administrative Procedures Act (APA) sets forth a strict timeframe for rulemakings. Under the APA, notice must be published in the Colorado Register twenty days before a hearing on proposed rules is held. The draft proposed rules for consideration at the hearing must be available to the public at least five days before the hearing. Following the hearing and subsequent adoption of any rule, the adopted rules must be submitted to the Attorney General for an opinion regarding their constitutionality and legality. After receipt of an opinion from the Attorney General, the rules are filed no later than the third Friday of the month for publication on the tenth of the next month in the Colorado Register. The rules are permanently effective twenty days after publication in the Colorado Register.

In drafting the revised Rule 45, this office has solicited the assistance of experts to identify specific security risks and define testing/certification requirements. The panel of experts includes state and private sector IS/IT professionals, computer scientists, and university professors. This group of expert held meetings on December 1 and December 12, 2006. Additional meetings are scheduled for January 8 and 19, 2007.

An informal public meeting has been scheduled for January 16, 2007 for the purpose of receiving public input prior to finalizing the proposed rules for consideration at the rulemaking hearing on February 6, 2007. Following the rulemaking hearing, the record will be held open for twenty days to allow for the submission of additional public comment on the proposed rules. At the close of the public comment period, the Secretary of State will consider the public comment submitted and make a determination regarding the adoption of rule amendments.